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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,166	07/12/2004	Albert Maria Arnold Rijkaert	2069.055US1	5382
21186	7590	03/13/2008	EXAMINER	
SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				TESLOVICH, TAMARA
ART UNIT		PAPER NUMBER		
2137				
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		03/13/2008		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/501,166	RIJKAERT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tamara Teslovich	2137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 December 2007.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-15 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 12 July 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1.) Certified copies of the priority documents have been received.  
 2.) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12.06.07</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

This Office Action is in response to Applicant's Remarks and Amendments filed December 6, 2007.

Claims 1-11 are amended.

Claims 12-15 are newly added.

Claims 1-15 are pending and herein considered.

### ***Non-Responsive***

The reply filed on December 6, 2007 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Although Applicant notes the introduction of newly added claims 12-15 on page 8 of his Remarks he makes no mention whatsoever of those claims throughout the remainder of his remarks. Applicant has provided absolutely no explanation as to why the claims have been added, or how exactly they are distinguished from the prior art reference. Furthermore, Applicant's inability to locate particular features in the references, does not in any way to support his conclusion that the claims are "not anticipated by" the references. The Examiner has provided Applicant with particular column and line numbers in order to aid in his understanding of the rejection of his claims and requests that Applicant refer back to the previous office action for those column and line numbers in order to help him locate the features in question.

Insofar as Applicant's response appears to be *bona fide*, the Examiner has treated the applicant as if it were complete without penalizing Applicant for his

omissions. However, the Examiner reminds Applicant of his duty to comply with each and every limitation of 37 CFR 1.111, including but not limited to those laid out in 37 CFR 1.111(b): (**emphasis added**)

In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which **distinctly and specifically** points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. **The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.** If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. **A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.**

Future failures to comply with 35 CFR 1.111 will result in a Notice of Non-Compliance.

### ***Response to Arguments***

Applicant's Amendments to the specification serve to place the application in accordance with 37 CFR 1.77(b).

Applicant's Amendments to claims 2-6, 8, and 11 serve to overcome the Examiner's previously set forth objections. The objection of claims 2-6, 8, and 11 as objected to because of informalities is therefore withdrawn.

Applicant's arguments appearing on pages 8-9 of the Remarks filed December 6, 2007 regarding the Examiner's 35 USC 112 rejections of claims 1, 3, 5, 6-7 and 9-10 have been fully considered but they are not persuasive. Applicant's response relies upon a definition from his specification wherein the term "substantially" appears. Unfortunately, the paragraph relied upon by Applicant fails to provide any specificity whatsoever insofar as it too remains replete with indefinite and relative terms, including but not limited to "sufficiently," "for example," "a meaningful part of," "say at last one or more hours, days or weeks." Insofar as this appears to be the only description of Applicant's "substantially prior to" the Examiner has no choice but to maintain the rejection previously set forth. Furthermore, newly amended claims 12-15 are rejected as relying upon rejected claims 1-11. Applicant's specification provides no standard for ascertaining the requisite degree necessary for one of ordinary skill to be reasonable apprised of the scope of the invention. As the claims stand at present, Applicant's "substantially far into the past" could include any period in time occurring in the past including those periods occurring just a millisecond ago as well as those occurring centuries before the invention of television. As such, Applicant's use of the phrase "substantially far" fails to limit Applicant's claims in any way and more so, renders them vague and indefinite.

Applicant's arguments appearing on pages 9-10 of the Remarks filed December 6, 2007 regarding the Examiner's 35 USC 102(b) rejections of claims 1-3 and 5-11 have been fully considered but they are not persuasive. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims

define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Applicant's arguments appearing on page 11 of the Remarks filed December 6, 2007 regarding the Examiner's 35 USC 103(a) rejection of claim 4 have been fully considered but are not persuasive. Applicant's arguments once again fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Applicant's sole argument concerns claim 4's dependence upon "allowable parent claim 1," however, insofar as Applicant has failed to specifically point out how claim 1 is patentable over the prior art, dependent claim 4 remains rejected.

For those reasons given above, the Examiner maintains the rejection of claims 1-11 set forth in the previous office action and included below in an amended form to address Applicant's amendments and newly added claims.

### ***Claim Objections***

Claims 1, 12 and 15 are objected to because of the following informalities:

In claims 1, 12 and 15 the phrase "concurrent the entitlement message" should be —concurrent with the entitlement message—.

Appropriate correction is required.

### ***Specification***

The disclosure is objected to because of the following informalities:

In line 1 of page 2 the phrase “a mechanism is to counter” should be —a mechanism to counter—.

In line 2 of page 2 the phrase “A the beginning” should be —At the beginning—.

In line 18 of page 2 the phrase “is enable in which” should be —in enabled in which—.

In line 22 of page 8 the phrase “is show only by way of example” should be —is shown only by way of example—.

Appropriate correction is required.

The specification has not been checked to the extent necessary to determine the presence of *all* possible minor errors. Applicant's cooperation is requested in correcting any additional errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The term "substantially" in claims 1, 3, 5, 6-7, 9-10 is a relative term, which renders the claim indefinite. The term "substantially" is not defined by the claim nor does the specification provide a standard for ascertaining the requisite degree. One of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-3 and 5-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Cadelore (US 6,363,149).**

Regarding claim 1, Cadelore discloses a method of distributing units of encrypted information and providing conditional access to the units using a secure device capable of selectively enabling decryption of said units, the method comprising;

distributing a stream comprising the units of information successively each linked to a respective time-stamp (col. 10, lines 55-67, lines 33-42; col. 11, lines 1-15); sending an entitlement management message to the secure device, the entitlement message including a specification of a range of time-stamp values and entitling the secure device to enable decryption of units of information that are linked to time-stamp with values in that range (col. 11, lines 34-49), wherein the range has a starting point and substantially prior to a time value of the time stamps distributed concurrent to the entitlement message (col. 11, lines 1-15; col. 10, lines 55-67; col. 9, lines 49-67) a memory card (col. 6, lines col. 7, lines 13-34).

Regarding claim **2**, Candelore discloses the method wherein the stream is distributed to a plurality of subscribers (col. 12, lines 59-64); each with an own secure device is an intrinsic property of the claimed invention, as without the secure device the content cannot be rendered to the customers (col. 6, lines 52-65; col. 9, lines 1-7); and wherein the entitlement management message is one of a plurality or respective entitlement management messages, each sent receivable for the secure device of a respective one of the subscribers (col. 7, lines 24-35), each entitlement management message including a specification of a respective range of time-stamp values (col. 11, lines 34-49), comprising; receiving subscriber dependent information (col. 12, lines 54, lines 54-64); setting a distance of said starting point to said time value in each of the respective ranges according to a respective distance value (col. 12, lines 60, 64; col. 10, lines 32-42 and selecting each respective distance value from a set of two or more distance values, dependent on the subscription information for the

subscriber for whose secure device the entitlement management message is receivable (col. 9, lines 35-62; see figure 5A of the drawings).

Regarding **claim 3**, Cadelore discloses the method wherein the entitlement management message is one of a series of successive ones entitlement management messages, each specifying its own range so that said slides with time so that the stating point substantially has a time independent distance to said time value (col. 4, lines 15-18; col. 9, lines 25-29; col. 11, lines 34-49; col. 10, lines 22-53).

Regarding **claim 5**, Cadelore discloses the method wherein the range ends substantially before the time value of the time stamp distributed concurrent with said one of the entitlement messages (col. 11, lines 34-49).

Regarding **claim 6**, Cadelore discloses sending further entitlement messages in addition to said entitlement messages, the further entitlement management specifying the further range and entitling the secure device to enable decryption of units of information that are linked to time-stamps with values in that further range (col. 10, lines 42-67).

**Claims 7-8** correspond to a system employing the method of claims 1-2 and are rejected accordingly.

Regarding **claim 9**, Cadelore discloses an input for receiving entitlement management messages (col. 4, lines 36-65); a memory for maintaining a current time count (col. 6, lines 52-67; col. 7, lines 1-12); a management unit for selectively enabling decryption of the information units under control of the entitlement management

messages that includes a specification of a range of time-stamp values linked to units of information, for which the secure device has to enable decryption, wherein the extending substantially prior to the current time count (col. 4, lines 35-67; col. 6, lines 52-64; col. 10, lines 33-43).

Regarding **claim 10**, Cadelore discloses an information distribution device arranged to distribute a stream of successive units of encrypted information to a secure device, each unit linked to a respective time-stamp; the device having; a transmitting unit for transmitting an entitlement management message including a specification of a range of time-stamp values and entitling the secure device to enable decryption of units of information that are linked to time-stamps with values in that range so that the range has a starting point substantially prior to a time value of the time stamps distributed concurrent with the entitlement message (col. 10, lines 5-27; col. 4, lines 35-67; col. 6, lines 52-64; col. 10, lines 33-43).

Regarding **claim 11**, Cadelore discloses the information distribution device according to claim 10, arranged to distribute the stream to a plurality of subscribers (col. 12, lines 59-64); each having a respective secure device (col. 6, lines 52-65; col. 9, lines 1-7) the entitlement management message being one of a plurality of entitlement management messages for reception by respective ones of the secure devices (col. 7, lines 24-35), each entitlement management message specifying a respective range of time-stamp values (col. 11, lines 34-49), comprising; an input for receiving subscriber dependent information (col. 12, lines 54, lines 54-64) means for setting a distance of said starting point to said time value in each of the respective ranges according to a

respective distance value (col. 12, lines 60, 64; col. 10, lines 32-42), the means selecting each respective distance value from a set of two or more distance values, dependent on the subscription information for the subscriber for whose secure device the entitlement management message is receivable (col. 9, lines 35-62; see figure 5A of the drawings).

Regarding **claim 12**, Cadelore discloses wherein sending an entitlement message includes entitling the secure device to enable decryption of units of information that are linked to time-stamps with values with the starting points at least sufficiently far into the past to contain at least a television program or a meaningful part of such a program prior to the time value of the time stamps distributed concurrent the entitlement messages (col. 10, lines 55-67, lines 33-42; col. 11, lines 1-15).

Regarding **claim 13**, Cadelore discloses wherein the starting point is at least one or more hours prior to the time value of the time stamps (col.11 lines 1-15).

Regarding **claim 14**, Cadelore discloses wherein the starting point is at least one day prior to the time value of the time stamps (col.11 lines 1-15).

Regarding **claim 15**, Cadelore discloses wherein sending an entitlement message includes entitling the secure device to enable decryption of units of information that are linked to time-stamps with values with the starting points at least sufficiently far into the past to contain at least a television program (col. 10, lines 55-67, lines 33-42; col. 11, lines 1-15) and at least one week prior to the time value of the time stamps distributed concurrent the entitlement messages (col.11 lines 1-15).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Candelore (US 6,363,149) and further in view of Thexton et al. (US 6,772,435).**

Regarding **claim 4**, Candelore discloses adjusting said starting point to a time independent distance before the current time value, the secure device deriving the time independent distance from said one of the entitlement management unit at least for a series of successive current time value (col. 10, lines 60-67; col. 13, lines 1-15; col. 11, lines 34-49).

However, Candelore does not disclose a secure device that maintains and updates a current time value corresponding to the time value of the time stamps as they are distributed as a function of time.

Thexton discloses a synchronizer to update current time value corresponding to the time value of the time stamps as they are distributed as a function of time (col. 1, lines 55-60). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Candelore to include the use of a synchronizer in

order to update the current time, such that subscriber may access past broadcast content at a later date.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara Teslovich whose telephone number is (571)272-4241. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tamara Teslovich/  
Examiner, Art Unit 2137

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